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BEFORE THE ARIZONA BOARD OF APPRAISAL

IN THE MATTER OF:

RODNEY L. MARTENSEN,
Licensed Residential Appraiser
No. 10079,

Respondent.

NOS. 04F-1646-BOA, 04F-1766-BOA

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF PROBATION

On March 16, 2006, the Arizona Board of Appraisal ("Board") met to consider the Administrative Law Judge Decision of Brian Brendan Tully in the above-captioned matters. Rodney L. Martensen ("Respondent") was not present but was represented by Paul J. Mooney, Esq. The State was represented by Elizabeth Campbell, Assistant Attorney General. The Board received independent legal advice from Victoria Mangiapane, Assistant Attorney General from the Solicitor General's Office. Having reviewed the record and having heard oral arguments on behalf of the parties, the Board hereby adopts the Findings of Fact (as modified), the Conclusions of Law, and the Order of the Administrative Law Judge as follows:

FINDINGS OF FACT

1. The Arizona State Board of Appraisal ("Board") is the authority for regulating and controlling the licensing and certification of real property appraisers in the State of Arizona.
2. Rodney L. Martensen ("Respondent") is the holder of Licensed Residential Appraiser License No. 10079 issued by the Board on December 31, 1991. That license permits Respondent to perform certain real property appraisals and appraisal reviews in Arizona.
3. Appraisers in Arizona are required to comply with the *Uniform Standards of Professional Practice* ("USPAP") published by the Appraisal Standards Board of The Appraisal Foundation, which is authorized by Congress as the source of appraisal standards and appraiser qualifications, and approved by the Board.

4. The subject property in this case is a single family residence located at 2813 East Elm Street in Tucson, Arizona. It is located in the Blenman Annex.

5. Respondent was hired to perform an appraisal of the property because the homeowners, the Darlings, were refinancing their loan.

6. Respondent inspected the property on August 8, 2003¹. At that time Respondent was paid the appraisal fee of \$350.00 by the homeowners. Respondent issued his appraisal report on August 28, 2003². He estimated the market value of the property including amenities as of August 8, 2003³, to be \$185,000.00.

7. The subject property has been purchased in April of 2000 for \$126,000.00.

8. The subject property had a main house and a detached guest house. The main house had two bedrooms and one bathroom consisting of 1,270 square feet. The guest house had one bedroom and one bathroom consisting of 914 square feet. The quality of construction for the guest house was less than the main house. The main house was one hundred percent brick construction. The guest house was a wood frame and wood panel construction.

9. A complaint was filed with the Board against Respondent by Gordon Speir, the homeowners' realtor, concerning the alleged delay in Respondent's submission of his appraisal report to the homeowners' refinancing lender. The homeowners allegedly hired another appraiser to complete another appraisal so that it could be timely submitted to the lender for refinancing. The second appraisal was submitted to the lender before Respondent completed his appraisal. The homeowners requested a refund from Respondent for the \$350.00 fee they had paid to him since they had to use the other appraiser's appraisal for the refinancing. There was no complaint about

¹The Board modifies the Findings of Fact to comport with the evidence.

²The Board modifies the Findings of Fact to comport with the evidence.

³The Board modified the Findings of Fact to comport with the evidence.

1 Respondent's valuation contained in his appraisal report. The homeowners later sold the subject
2 property.

3 10. The Board assigned the complaint to Steven R. Cole, MAI, SRA, who is a contract
4 investigator for the Board, for investigation to determine if Respondent committed any USPAP
5 violations. Mr. Cole is an Arizona Certified Real Estate Appraiser, who may conduct all types of
6 appraisals. Although Mr. Cole has experience as a residential appraiser, his appraisal practice is
7 primarily commercial. Mr. Cole performed an investigation rather than an appraisal review.

8 11. Respondent's appraisal was done on a standard approved uniform residential
9 appraisal report form.

10 12. There is no credible evidence that Respondent was given a deadline to submit his
11 appraisal report or that he agreed to a deadline date. He inspected the subject property on August 8,
12 2003 and submitted his report on August 28, 2003. During the time between Respondent's
13 inspection and the submission of his appraisal report, Respondent's computer had crashed and he
14 had a high volume of business due to favorable refinance market conditions.

15 13. The Board's expert, Mr. Cole, testified that the interval of time between Respondent's
16 inspection of the subject property and the submission of his appraisal report did not violate USPAP.

17 14. Respondent had personally inspected the interior of the subject property's main house
18 and guest house when preparing his appraisal report. Mr. Cole did not conduct an inspection of the
19 interior of the main house or guest house.

20 15. The Board's complaint makes the following factual allegation against Respondent:

21 The subject property has a guest house. Respondent failed to consider sales within
22 the immediate area of the subject property that had guest houses. There were at least
23 seven sales with guest houses within this area that could have been considered. The
24 Respondent used only one of these sales.

25 16. Mr. Cole opined that "the main problem with [Respondent's] appraisal is his entire
26 lack of any rationale or reasoning for his adjustment for the guest house or lack thereof, and as a
27 result a low opinion of value."
28

1 17. The seven sales with guest houses referenced by the Board were potential comparable
2 sales, not comparable sales, identified by Mr. Cole, who was performing an investigation and not
3 an appraisal review.

4 18. The Board further alleges that "Respondent did not appropriately adjust for
5 differences in building size." The evidence of record supports a finding that Respondent did make
6 appropriate adjustments.

7 19. The Board alleges that "Respondent did not adequately adjust for the contribution to
8 the value of the subject property by the guest house." Respondent testified that the guest house was
9 an amenity, similar to a swimming pool. The Board presented evidence that the size of the guest
10 house, in relation to the size of the main house, should have resulted in a higher contribution to the
11 value of the total property. There is evidence that the quality of construction of the main house was
12 superior to that of the guest house. Respondent is found to have adequately adjusted for the
13 contribution of the guest house as an amenity to the total value of the subject property.

14 **Docket No. 04F-1766-BOA**
Case No. 1766

15 20. The subject property in this case is a single family residence located at 1826 South
16 Avenida Planeta in Tucson, Arizona.

17 21. Ryan D. Osheel of Equity One filed a complaint against Respondent with the Board
18 concerning the subject property and another property located on East Kenyon Drive, Tucson,
19 Arizona.

20 22. On May 24, 2004, the Board issued a subpoena duces tecum to Respondent for his
21 work file and other documentation related to his work on the Avenida Planeta property⁴.

22 23. During the Board's initial investigation, both properties were referred to as Case No.
23 1650. Respondent furnished documentation for both properties to the Board.

24 24. The properties were subsequently assigned individual case numbers. The Board did
25 not prosecute Respondent in Case No. 1650.

26
27 ⁴The Board modifies the Findings of Fact to comport with the evidence.

25. On or about May 24, 2004, the Board issued a subpoena duces tecum to Respondent for the production of his work file and other documentation of his workfile on the subject property.

26. Respondent failed to respond to the Board's subpoena. He contends that he ultimately did not perform an appraisal of the subject property and had produced all of his work documentation for it when it was being jointly investigated by the Board.

27. Respondent is found to have failed to comply with the Board's subpoena. If Respondent's contention that he had previously submitted all of his work documents for the subject matter to the Board were true, at a minimum he should have communicated that to the Board, but he did not.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in these two cases.

2. Pursuant to A.R.S. §41-1092.07(G)(2), the Board has the burden of proof in this matter. The standard of proof is a preponderance of the evidence. A.A.C. R2-19-119(A).

3. In Docket No. 04F-1646-BOA/Case No. 1646, it is concluded that the Board failed to sustain its burden of proving that Respondent violated the provisions of A.R.S. §§ 32-3631(6) and (7).

4. The conduct described in Docket No. 04F-1766-BOA/Case No. 1766 constitutes a violation by Respondent of A.R.S. § 32-3631(A)(8) for violating the Board's subpoena duces tecum issued pursuant to A.R.S. § 32-3631(C). It is concluded that disciplinary action is warranted for Respondent's failure to comply with the Board's subpoena duces tecum issued pursuant to A.R.S. § 32-3631(C).

ORDER OF PROBATION

In issuing this order of discipline, the Board considers its obligations to fairly and consistently administer discipline, its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. Docket 04F-1646-BOA is dismissed.

2. With regard to Docket 04F-1766-BOA, Respondent's License No. 10079 shall be placed on unsupervised probation for a period of six months commencing on the effective date of this Order. During his term of probation, Respondent shall comply with all statutes and regulations applicable to the practice of appraisal in Arizona. Any violation of applicable statutes and regulations shall constitute grounds for further disciplinary action against Respondent after notice.

3. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations set forth herein to amount to a Level III Violation for disciplinary purposes.


RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 20th day of March, 2006.

ARIZONA BOARD OF APPRAISAL,

By: 
Deborah G. Pearson, Executive Director

Copy of the foregoing personally served
this 20 day of March, 2006, on:

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007